

DRAFT MINUTES
WATER POLICY TECHNICAL ADVISORY COMMITTEE MEETING
AUGUST 27, 2004

Attendance:

Water Policy Technical Advisory Committee Members:

Bob Burnley, DEQ	Jesse Richardson, VAPA
Jerry Peaks, VDH	Jerry Higgins, Blacksburg, Christiansburg, VPI
Tom Botkins, VMA	Water Authority
Art Petrini, Henrico County	Josh Rubinstein, VA. Rural Water Association
Frank Sanders, City of Winchester	Ed Imhoff
Judy K. Dunscomb, The Nature Conservancy	Traci Goldberg, for Charlie Crowder, Fairfax
Terry Reid, VAWWA	County Water Authority
Cathy Taylor, Dominion	William E. Cox, Virginia Tech
Mike West, HBAV	Ward Staubitz, USGS
Kristen Lentz, City of Norfolk	David Paylor, Deputy SNR
Guy Aydtlett, VAMWA	Dan Kavanaugh, VAPDC
Patti Jackson, James River Association	Robert Royall, VA. Water Well Association
Katie Kyger, VA. Agribusiness Council	
David Kovacs, VCN	

Members Absent:

Christopher Miller, Piedmont Environmental	Mike Thacker, AEP
Council	Eldon James, RRBC
Robert Conner, Brunswick County	Wilmer Stoneman, VA. Farm Bureau
Jeffery Irving, U.S. Army Corps of Engineers	

DEQ and Facilitation staff:

Scott Kudlas
Terry Wagner
Joe Hassell
Kathy Frahm
Barbara Hulburt
Mark Rubin

Interest Group Members:

John Kauffman, DGIF
Tom Gray, VDH
John Carlock, Hampton Roads PDC

Observers:

Larry Land, VACO
Becky Mitchell, City of Virginia Beach
Greg Prelewicz, FCWA

Denise Thompson, VML
Brent Waters, Golder Associates
Ray Jackson, WWAC

Summary of the Meeting:

The meeting began with introductions of WP-TAC members and observers present.

Mark Rubin discussed the tasks for the day. He reminded the group of how far they have come since the process began. The group started with no agreement, moved to an acceptance that planning is good and now are moving toward something that may be getting closer to agreement.

Mark Rubin then asked state staff to present the proposal that DEQ has put forward as their preferred option for concluding this process. Scott Kudlas outlined the three components of the DEQ proposal:

First, the planning regulation, would no longer require a formal Phase II process but would require the following:

- 1) An assessment of existing water sources
- 2) An assessment of existing water use
- 3) A description of existing water resource conditions
- 4) An assessment of projected water use
- 5) A description of water demand management actions (conservation)
- 6) A description of drought management strategies
- 7) An alternatives analysis that identifies:
 - Potential demand reductions (volume) from water management actions
 - Potential sources for new supplies
 - Potential volume from each source needed to address demands
 - Potential resource issues/impacts known for each source
- 8) All localities would be required to plan
- 9) Localities would be required to achieve compliance by a date certain
- 10) State technical assistance available to all
- 11) While the state expects most localities to comply and will assist in any way possible, he indicated that the state is concerned that it will not be able to identify inter-jurisdictional conflicts or cumulative resource impacts if gaps exist because of the lack of locally provided plans. In those cases, DEQ believes it should make some assumptions for the locality--ideally by working closely with them. DEQ would like to discuss this further with the Steering Committee.

Second, DEQ proposes to issue a NOIRA so that the Virginia Water Protection Program regulation would be modified to address remaining phase II issues:

- 1) Issue a NOIRA as soon as possible (October 2004) that identifies, at a minimum, changes to address these phase II elements:
 - Alternatives analysis to select most viable projects
 - Cumulative resource impact analysis
 - Detailed demand/needs assessment

- 2) The NOIRA would also address the addition of a Pre-Application Scoping Meeting that includes the applicant, DEQ, other reviewing agencies, and the public. Issues to be addressed that are associated with this meeting include:
 - Threshold size of withdrawal to necessitate meeting (DEQ prefers this to the type of user)
 - All information presented would be part of the public record, regardless of whether a meeting is necessary

Third, to address implementation and coordination issues, DEQ would:

- 1) Request that the Governor consider issuing an Executive Order regarding agency comment and coordination
- 2) Propose technical assistance funding for local implementation

After taking some questions, Mark Rubin requested that each Interest Group spend 30-minutes to review the DEQ proposal, the draft regulation, and then return with comments.

When the groups returned, Mark asked each group to report. He began with the Planning Interest Group.

Planning Interest Group

- They believe that if funded properly, with sufficient staff time and will, they think this will go.
- This is satisfactory to good as a water planning process.
- They have some concern that a number of things have gone unsaid: first, the proposal to use the VWP may be a workable strategy but the VWP wasn't a fully stand-alone statute initially (it was a means to address Section 401 certification); second, the proposal assumes a fairly large state capacity to do analysis and conflict identification. In their view, additional state funding and staff will be necessary to implement.
- They wanted to clarify and emphasize that an individual permit applicant can't look at cumulative impacts on river basin scale – that function should be explicitly stated as the state's role. The linkage to the State Plan needs to be clarified.
- Success is subject to political will, money, time, and staff.

Water Suppliers Interest Group

- Their goals were to obtain streamlining and advocacy and they acknowledge that these are not in the proposed regulation.
- They have tried to make revisions to the regulations to make them simpler and less burdensome for small localities. They have also tried to focus the expectation for local work to compiling information that's available from state. They still have some concerns about resources that will be needed to comply.
- They see one result of this planning effort to be a preliminary look at water resource issues and needs. Therefore, they have a concern over in-stream beneficial use issues. The reasonableness of the level of analysis ultimately required is important to them. It should be commensurate with a preliminary look at these issues. For example, the MIF study in Winchester has taken 6 ½ years and \$600,000--including a lot of state money. While they acknowledge that this concern is over only a few words, these words are very important to both sides.
- A lot is proposed to be moved to the VWPP and for their purposes, the planning regulation is open while the VWP is not. They expressed some concern that advocacy was taken off the list because it is still one of their goals. If the system is streamlined, they feel the state gets into a better position to be comfortable with advocacy.
- They would like to see the regulation language tied to things like "readily available information" etc.
- The AWWA has pushed for water planning since the 1980s. They have consistently taken the position that planning at state level is important, but so is streamlining and advocacy with the federal agencies after state concerns are satisfied.
- They plan to discuss the proposal as a group in preparation for the September 3rd Steering Committee.

Environmental Interest Group

- They are trying to work with the DEQ proposal. The fact that water is being looked at as a resource is a positive thing for them.
- They came into this process with the following critical areas: water as a resource, water quality, cumulative impact, in-stream uses, and alternatives analysis. They don't feel that the current draft minimizes the issues that they think are important.
- They concur that streamlining is important. They believe that good up front planning to help with this. The real question is how to balance how much is enough and at what price.
- Without a Phase II, they feel it is that much more important that the qualitative aspects of the evaluation aren't ignored.
- They believe there are 18 areas need work (**considered critical issue for them):
 - Section 10(C)
 - Definitions – need to understand
 - Sections 50, 60 – need to understand “in conjunction with 110”
 - Section 60(c)(4) – projected water use and demand
 - Section 110 – same as above
 - Section 60(D) – triggers for reviews – where new info demonstrates overuse
 - Section 70 – add (B) – what is it that DEQ does (i.e. cumulative impact analysis, bring agencies together, etc.)
 - Section 100(B) – strike out re: water protection plan – moved to (f); just not entirely clear on what's happened here – don't want it to get lost
 - Section 110 – understand use/demand - Add in-stream beneficial uses to make sure that in-stream uses are analyzed
 - Section 120 – new language to propose re: integrated water management concepts from AWWA
 - Section 140(a) whether source is adequate: Look at cumulative demand and other uses; state versus local role in evaluation and what happens after analysis is provided?
 - Section 140(b)(1) placeholder for AWWA language
 - Section 140(b)(3) explain locality/DEQ roles – how is it integrated?
 - **Section 150(c)(5) – Section 780-100 doesn't have evaluation component in it, but it is referred to here
 - Section 150(c)(9) – “when required” – as written they always have to do this
 - **Section 150(c) add in-stream uses into this section somewhere
 - Role of State Water Resources Plan – several key points have been sent over here – have to look to see what's there and how it relates to the regulations

Business/Commercial Interest Group

- Their goals are the protection of existing water rights and promotion of planning to achieve long-term supply.
- They are conceptually okay with the proposal and regulation as written.
- They want to see the language that the Environmental Interest Group has said it intends to revise for Section 780-120
- They still have concerns about how the following terms will be defined: demand management, integrated water planning and conservation.
- BOCA reference needs to be updated to reflect what is used today.

DEQ Leadership

- They have learned a lot about what things are important to the groups at the table. They appreciate the generosity folks have shown with their time by participating in the process.
- They have tried hard to listen to all of the concerns presented and tried to meet state's interest while addressing as many of their concerns.
- Regarding funding necessary to implement the program, they have begun moving that direction already and feel confident that they can get some help from the General Assembly.

- Advocacy, particularly with federal agencies, will be provided at some level by the inclusion of local plans into the State Plan. Beyond this regulation, we are open to discuss other options.
- In-stream uses have to be an element of these plans. They have to be protected and language will be in this regulation. The details need to be worked out.
- They will try to do everything possible to accommodate as many of the issues that have been raised

State staff presented the changes to the VWP that DEQ has drafted as an outline for the NOIRA. Staff indicated that the following areas have been identified:

- 1) Pre-Application Scoping Meeting
 - Informational Only
 - Applicant Presents Project Alternatives and Demand Projection
 - Public Can Speak to identify additional issues or concerns
 - For individual permits for wetlands of a certain size and withdrawals only
 - Need to decide how agencies should participate -- since we get formal comments from them after we receive application
- 2) Requirement for Cumulative Impact Assessment
 - Already required by statute
 - Need to institute more formal process and detail requirements
 - For individual permits for wetlands and withdrawals only -- may want to set further limits where cumulative impact analysis is not required
- 3) Clarify requirements for alternatives analysis
 - Already in regulation but not clear
 - Different information needed for withdrawals, especially on non-wetland impacts
- 4) Clarify grandfathering of withdrawal permits and who needs and doesn't need permit by defining the terms "existing withdrawal", "new withdrawal" and "increased withdrawal"
 - Stipulate in accordance with OAG opinion that a Section 401 activity is not a prerequisite to regulation of new withdrawals.
 - Change in language not necessary but would alert the public and staff
 - Could add in exemptions based on activity if hardship would accrue
- 5) Drought issues should be added
 - Emergency permit language for withdrawals for water supply in times of drought
 - Pre-conditions for obtaining relief from MIF conditions during drought, if any.
- 6) Housekeeping Amendments to consider
 - Any similar language that was changed in GP revisions
 - Clarify ability to waive when Wetlands Boards (not just VMRC) issue tidal permits

State staff said that no other changes to the VWP are being considered at this time.

Mark Rubin asked for assistance from the WP-TAC is providing guidance to the state on what clarifications are needed to explain the state role. The following suggestions were made:

- State staff presented a flip chart at a Steering Committee meeting that included a side bar of state review issues. These should be reviewed and considered for inclusion in the regulation.
- Clarify how to coordinate agency input
- Clearly assign responsibility for cumulative impact evaluations
- What goes to the SWCB? How does agency analysis get into the local plan? Is the local plan amended to reflect agency comment?

- After local plans have been evaluated, preliminary assessment by the state of in-stream flow issues should be conducted. This should be done to facilitate future basin analyses, cumulative impact evaluations, and use conflict determinations.
- Clarify that development of MIFs is not a local responsibility. An interim flow level should be used as a placeholder pending development of more detailed in-stream flow data.
- State still needs to identify data needs. The state should define the process for state and federal partners to initiate this data collection and analysis effort.
- The state should start with developing a water availability measure for use in local plans.
- The state should consider defining state role in conflict resolution within the regulations.
- How is the state going to facilitate information for local use?
- State should evaluate whether cumulative impact analysis is appropriate given the anticipated level of detail that alternatives will be developed.
- The state should consider the use of a state-wide ground water management area.
- The state should consider developing VWP changes as an emergency regulation so that it can be on the same schedule as the planning regulation.
- In making changes to the VWP, it should be clear that local alternatives generated in the planning process should be addressed and that the scoping meeting should not be subject to other permit time constraints. Others indicated that it need some time limit and couldn't be open-ended.

The meeting adjourned until the full WP-TAC meeting September 13th. Interest groups were encouraged to discuss whatever they might need to discuss.